

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CRIMINAL CASE NO. 2:09cr15**

**UNITED STATES OF AMERICA,** )

)

)

**vs.**

)

)

)

**JOHN DOUGLAS BIRD, JR.** )

)

**ORDER**

**THIS MATTER** is before the Court on the Defendant's Rule 33 Motion for New Trial and Unopposed Request for Evidentiary Hearing based on Newly Discovered Evidence [Doc. 82].

The Court conducted a status conference with the parties on August 20, 2012 during which the Government consented to an evidentiary hearing limited to the newly discovered evidence presented by the statement of Deborah Caro. Although the Defendant sought the opportunity to present additional evidence, including expert evidence, at such a hearing, counsel conceded that a sequential approach to the motion would be properly applied.

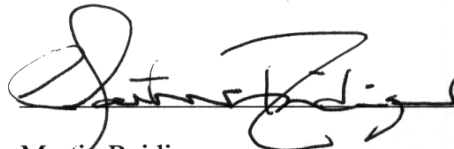
The Court will therefore grant the Unopposed Request for Evidentiary Hearing and based upon the filings of the parties as to the content and nature of the newly discovered evidence the Court will limit that hearing to testimony

from the following witnesses: Deborah Caro, Justin Denig, Joseph "Jo Jo" Caro, Anita Sexton, Officer Kelly Holder and Detective William Owl of the Cherokee Indian Police Department.

**IT IS, THEREFORE, ORDERED** that the Defendant's Rule 33 Motion for New Trial and Unopposed Request for Evidentiary Hearing based on Newly Discovered Evidence [Doc. 82] is hereby **GRANTED** in part to the extent that an evidentiary hearing is hereby scheduled for October 17, 2012. The motion is otherwise held in abeyance.

**IT IS FURTHER ORDERED** that the witnesses at such hearing are limited in accordance with this Order.

Signed: August 20, 2012

  
Martin Reidinger  
United States District Judge

